

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL BEIERMANN and TAMMY
BEIERMANN, a marital community,

Plaintiff,

v.

JPMORGAN CHASE BANK NATIONAL
ASSOCIATION, a New York corporation, and
QUALITY LOAN SERVICE CORPORATION
OF WASHINGTON, a Washington corporation,

Defendant.

No.

NOTICE OF REMOVAL

TO: Clerk, United States District Court for the Western District of Washington;

AND TO: Plaintiffs Michael Beiermann and Tammy Beiermann;

AND TO: John W. Ladenburg, Sr., Ladenburg Law PLLC, Plaintiffs' attorneys.

Defendant JPMorgan Chase Bank, N.A. ("Chase") hereby removes this action, originally filed in the Superior Court of the State of Washington for Pierce County, to the United States District Court for the Western District of Washington at Tacoma. Chase removes the case pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, on the following grounds:

1. On or about October 17, 2011, Plaintiffs filed this action in the Superior Court of the State of Washington for Pierce County under cause number 11-2-14760-1. Chase was served with process on October 21, 2011 in New York via UPS and was also served with

1 process at the Chase Tacoma Main Branch on October 19, 2011. Thus, as of the filing of this
 2 Notice of Removal, Plaintiffs have failed to perfect service of process on Chase.

3 2. This Notice of Removal is timely under 28 U.S.C. § 1446(b), as it is being
 4 filed within thirty days of Chase's receipt of the Complaint and Summons. A copy of the
 5 complete state court record is attached to the Verification of State Court Records as Exhibit
 6 A, which is being filed concurrently with this Notice of Removal, as required by 28 U.S.C.
 7 § 1446(a) and Local Civil Rule 101(b) for the Western District of Washington.

8 4. This is a civil action over which this Court has original jurisdiction under 28
 9 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, exclusive of interest and
 10 costs, and the suit is between a citizen of Washington and a foreign business entity.

11 5. The amount in controversy exceeds \$75,000 because Plaintiffs are seeking
 12 damages for the "amount of equity [they] lost" when their former residence at 5225 South
 13 Warner Street in Tacoma, Washington (the "Property") was sold at a trustee's sale. *See*
 14 Compl. ¶ 3.7. The amount owing on their loan was initially \$67,500. *See* Decl. of Matthew
 15 Sullivan, Ex. A (Deed of Trust). The amount owing on their loan at the time of the November
 16 20, 2009, trustee's sale was \$84,321.69. *Id.* ¶ 3 & Ex. B (Trustee's Deed). The sale price at
 17 the trustee's sale was \$103,000. On information and belief, surplus proceeds in an amount of
 18 \$15,711.33 are currently being held by the Court, pending resolution of competing claims to
 19 those funds. *Id.* ¶ 6, Exs. D & E.

20 According to the Pierce County Assessor, the tax value of the Property in 2009 was
 21 \$182,200. *Id.* ¶ 4 & Ex. B. The Property was worth \$181,600 in 2009 and \$164,700 in 2010.
 22 *Id.* ¶ 4 & Ex. B. Given that the sale occurred in 2009, the amount in controversy is at least
 23 \$78,600, even when accounting for the surplus funds from the trustee's sale. And this amount
 24 does not include Plaintiffs' claims for "emotional distress, public embarrassment, and loss of
 25 credit rating," or their request for treble damages.

26 6. Complete diversity exists because Plaintiffs are Washington residents and
 27 Chase is a national banking association, organized under the laws of the United States, with

1 its main office in Ohio. For purposes of diversity jurisdiction under 28 U.S.C. §§ 1332 and
 2 1348, a national banking association is a citizen of the state in which its main office, as
 3 identified in its articles of association, is located. *See Wachovia Bank, N.A. v. Schmidt*, 546
 4 U.S. 303, 318 (2006) (rejecting argument that national banking association is a citizen of
 5 every state in which it operates). Although Quality Loan Service Corporation of Washington
 6 (“Quality Loan”) is also a Washington corporate entity, it is a nominal defendant that the
 7 Court should ignore for purposes of diversity. If a trustee “has no interest in the outcome of
 8 [the] litigation,” the trustee “is a nominal defendant,” and “its citizenship is not considered for
 9 the purpose of establishing diversity jurisdiction.” *Prasad v. Wells Fargo Bank, N.A.*, 2011
 10 WL 4074300, *3 (W.D. Wash. Sept. 13, 2011). Indeed, a trustee is “[t]he paradigmatic
 11 nominal defendant,” particularly where the trustee is joined “merely because [it] occupies the
 12 position pursuant to a deed of trust.” *See id.* at *2 (quoting *SEC v. Cherif*, 933 F.2d 403, 414
 13 (7th Cir. 1991); *Anderson*, 2011 WL 2470509, at *4–*5). For example, in *Prasad*, this Court
 14 found that plaintiff sought no relief against the nominal trustee, because he alleged only that
 15 the trustee “act[ed] as an impostor” and lacked the power to foreclose. *Id.* at *4. Similarly,
 16 Plaintiffs’ Complaint alleges “Defendant Quality [Loan] is not authorized to act as trustee,”
 17 and “actions taken by Defendant Quality [Loan] are null and void.” Compl. ¶ 3.6.

18 Moreover, although the Complaint purports to seek relief from “Defendants Chase and
 19 Quality [Loan]” for refusing to reinstate Plaintiffs’ loan, Chase is the only entity with the
 20 ability to reinstate Plaintiffs’ loan. Quality Loan, as trustee, does not have any authority to
 21 determine whether or when Plaintiffs may bring their loan current (i.e. reinstate their loan).
 22 Thus, Plaintiffs’ claims actually lie against only Chase.

23 7. This action may be removed to this Court pursuant to the provisions of 28
 24 U.S.C. § 1441(a) because it is a civil action brought in a state court of which the district courts
 25 of the United States have original jurisdiction, pursuant to 28 U.S.C. § 1332.

26 8. Removal is proper to the Western District of Washington at Tacoma because
 27 the district and division embrace Pierce County, Washington.

1 9. Quality Loan, through its attorney of record, consents to removal.

2 10. Attached as Exhibit A to this notice is all process, pleadings, papers and orders
3 served in this action. 28 U.S.C. § 1446(a).

4 11. Chase will promptly file a copy of this Notice of Removal with the Clerk of the
5 Superior Court of the State of Washington for Pierce County.

6 WHEREFORE, Chase respectfully gives notice that the above-entitled action is
7 removed from the Pierce County Superior Court to the United States District Court for the
8 Western District of Washington at Tacoma.

9
10 DATED this 18th day of November, 2011.

11 Davis Wright Tremaine LLP
12 Attorneys for Defendant Chase

13 By /s/ Matthew Sullivan
14 Fred B. Burnside, WSBA #32491
15 Matthew Sullivan, WSBA #40873
16 Suite 2200
17 1201 Third Avenue
18 Seattle, Washington 98101-3045
19 Telephone: (206) 757-8257
20 Fax: (206) 757-7257
21 E-mail: fredburnside@dwt.com
22 E-mail: matthewsullivan@dwt.com

CERTIFICATE OF SERVICE

I declare under penalty of perjury that on this day I caused a copy of the foregoing Notice of Removal to be served upon the following:

John W. Ladenburg, Sr.	(X)	U.S. Mail
Ladenburg Law, PLLC	()	By Federal Express
1019 Pacific Avenue, Ste. 1116	()	By Facsimile
Tacoma, Washington 98402	()	By Messenger

Dated at Seattle, Washington, this 18th day of November, 2010.


Anita Griffin

EXHIBIT A

2011-10-19 11:47 Assign/Court Received @ 0485112926764200 P 2/9

retail mortgage
email: Docket Manager @ 11:38am on 10/19/11
by ARVIN KUMAN

E-FILED
 IN COUNTY CLERK'S OFFICE
 PIERCE COUNTY, WASHINGTON

October 17 2011 3:43 PM

KEVIN STOCK
 COUNTY CLERK
 NO: 11-2-14760-1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 IN AND FOR PIERCE COUNTY

MICHAEL BEIERMANN AND TAMMY
 BEIERMANN, a marital community

No.

Plaintiffs,

SUMMONS

v.

JP MORGAN CHASE BANK NATIONAL
 ASSOCIATION, a New York corporation, and
 QUALITY LOAN SERVICE CORPORATION OF
 WASHINGTON, a Washington Corporation,

Defendants.

Legal Papers Served
 (New York)

B. Russell
 Date: 10/21/11

OCT 21 2011

XUPS
☐ Inter-office Mail ☐ Certified Mail
☐ Federal Express ☐ Hand Delivery
☐ Fax ☐ U.S. Mail ☐ Email
 Reviewed by: *IN-4054*

TO: JP MORGAN CHASE BANK NATIONAL ASSOCIATION

A lawsuit has been started against you in the above-entitled court by Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons. In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the Plaintiff within twenty (20) days after the service of this Summons, excluding the day of service, or within sixty (60) days if this Summons was served outside the State of Washington, or a default judgment may be entered against you without notice. A default judgment is one where Plaintiff is entitled to what s/he asks for because you have not

SUMMONS - Page 1

LADENBURG
 LAW, PLLC
 Attorneys At Law

1019 Pacific Ave. Suite 1116
 Tacoma, Washington 98402
 Phone: (253) 272-5228
 Facsimile: (253) 295-2326

COPY

2011-10-19 11:47

>> 0485112926764200 P 3/9

1 responded. If you serve a Notice of Appearance on the undersigned attorney you are entitled
2 to notice before a default judgment may be entered.

3 You may demand that the Plaintiff file this lawsuit with the court. If you do so, the
4 demand must be in writing and must be served upon the Plaintiff. Within fourteen (14) days
5 after you serve the demand, the Plaintiff must file this lawsuit with the court, or the service
6 on you of this Summons and Complaint will be void.

7
8 If you wish to seek the advice of an attorney in this matter, you should do so promptly
9 so that your written response, if any, may be served on time.

10 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the
11 State of Washington.

12
13 DATED this 17th day of October, 2011.

14 LADENBURG LAW, PLLC

15
16
17 /s John W. Ladenburg, Sr.
18 JOHN W. LADENBURG, SR., WSBA #5075
19 Attorneys for Plaintiffs
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2011-10-19 11:48

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E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

October 17 2011 3:43 PM

KEVIN STOCK
COUNTY CLERK
NO: 11-2-14760-1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

MICHAEL BEIERMANN AND TAMMY
BEIERMANN, a marital community

No.

Plaintiffs,

COMPLAINT FOR WRONGFULL
FORFEITURE

v.

JP MORGAN CHASE BANK NATIONAL
ASSOCIATION, a New York corporation, and
QUALITY LOAN SERVICE CORPORATION OF
WASHINGTON, a Washington Corporation,

Defendants.

COME NOW the Plaintiffs, by and through their attorney of record, JOHN W.
LADENBURG, Sr. of LADENBURG LAW, PLLC herein and for a cause of action against
the Defendants, alleges as follows:

I. PARTIES, JURISDICTION AND VENUE

1.1 Plaintiffs Michael and Tammy Beiermann (Beiermann) are a married couple
residing in Pierce County and had an interest in real property located in the state of
Washington.

1.2 Plaintiffs have legal standing to commence this action in Pierce County
Superior Court. Plaintiffs entered into the contract giving rise to this action in Pierce County
and the deed of trust which secures performance of the contract encumbered real property
located in Pierce County, Washington.

COMPLAINT FOR
WRONGFULL FORFEITURE - Page 1

LADENBURG
LAW, PLLC
Attorneys At Law

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Tacoma, Washington 98402
Phone: (253) 272-5228
Facsimile: (253) 295-2326

COPY

2011-10-19 11:48

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1 1.3 Upon information and belief, Defendant JP MORGAN CHASE NATIONAL
2 ASSOCIATION Inc. (hereinafter "Chase") is a corporation organized in the state of New
3 York, conducts business in Pierce County, Washington, and, at all times relevant hereto, is
4 the successor-in-interest Washington Mutual Bank, FA.

5 1.4 Upon information and belief, Defendant Quality Loan Service Corporation,
6 (hereinafter "Quality") is a corporation organized in the state of Washington, conducts
7 business in Pierce County, Washington, and, at all times relevant hereto, is claiming to be
8 the trustee to the deed of trust securing Plaintiffs' loan obligation to Plaintiffs' primary
9 residence.

10 1.5 Pierce County Superior Court has jurisdiction and is the proper venue for
11 adjudication of this matter.

12 II. FACTS

13 2.1 Plaintiffs hereby incorporate by reference the above paragraphs.

14 2.2 At all times relevant hereto, Plaintiffs made their primary residence at 5225
15 South Warner Street, Tacoma, Pierce County, Washington.

16 2.3 On or about September 20, 1996 Plaintiffs signed a Deed of Trust and loan
17 with Fleet Mortgage Corporation of South Carolina as lender. Washington Mutual Bank
18 thereafter merged with Fleet Mortgage. First American Title Company was listed as Trustee
19 on the Deed of Trust.

20 2.4 On October 1, 2001, the Deed of Trust as assigned and transferred to Federal
21 National Mortgage Association (Fannie Mae) of Milwaukee, Wisconsin.

22 2.5 On September 25, 2008, Defendant Chase claimed to have acquired the loan
23 from the FDIC under the receivership that commenced against Washington Mutual, although
24 Washington Mutual had assigned the Deed to Fannie Mae in 2001 and no re-assignment has
25 been recorded.

26 2.6 Defendant Chase claims to have appointed Defendant Quality as Successor
27 Trustee. The deed of trust allows the appointment of a successor trustee in cases where the
 named trustee "ceases to act". Defendant Chase has made no showing or claim that First
 American Title Company "ceased to act" as trustee or that First American Title Company is
 not capable and willing to continue as trustee.

2.9 Also in that notice was this warning, all in capital letters, "AFTER 11/9/2009, YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS OUTLINED ABOVE".

2.14 On August 18, 2008 Plaintiffs tendered to Defendants two checks for \$3028.00, more than the amount claimed by Defendants, but Defendant bank refused to accept Plaintiffs efforts to pay all the past due amounts and reinstate the loans under the terms of the deed of trust.

3.2 In the course of conducting its business Defendants made numerous

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Tacoma, Washington 98402
Phone: (253) 272-5226
Facsimile: (253) 295-2325

2011-10-19 11:48

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1 misrepresentations and failed to disclose material terms as alleged. Such conduct constitutes
2 unfair or deceptive acts or practices in trade or commerce, and/or unfair methods of
3 competition in violation of RCW 19.86.020, is contrary to the public interest, and is not
4 reasonable in relation to the development and preservation of business.
5

6 **B. Unfair Practices**

7 3.3 In the course of conducting its business Defendants engaged in numerous unfair
8 acts and practices as alleged in paragraphs 1.1 through 3.8. Such conduct constitutes unfair
9 practices and violates RCW 19.86.020, is contrary to the public interest, and is not reasonable
10 in relation to the development and preservation of business.

11 3.4 Defendants Chase and Quality failed to comply with the terms of the deed of
12 trust. The defendants did not comply with the Deed of Trust's terms for reinstatement by
13 claiming that Plaintiffs could only reinstate up to eleven (11) days before the sale, when in
14 fact Plaintiffs should have been given reinstatement up to five (5) days before the sale. This
15 prevented Plaintiffs from re-instatement.

16 3.5 The Notices given by Defendants were inaccurate as to the amount of debt or
17 the terms of reinstatement and are legally insufficient to allow foreclosure.

18 3.6 In a non-Judicial foreclosure any defect in notice, amounts or dates are fatal to
19 the legal requirements of the law and the foreclosure improper.

20 3.5 Defendants actions violate the Washington Consumer Protection Act and
21 entitle Plaintiffs to treble damages and attorney's fees.

22 3.6 Defendant Quality is not authorized to act as trustee. The Deed of Trust
23 designates First American Title Company as the trustee. First American Title Company is
24 still in business and has not refused to act as trustee. Defendant Chase has provided no
25 evidence that First American Title Company has "ceased to act" as required by the Deed of
26 Trust. Any actions taken by Defendant Quality are null and void.

27 3.7 Defendants wrongfully sold Plaintiff's house at Auction, causing loss of the
Plaintiff's equity in the home. Plaintiffs are entitled to the amount of equity lost, and pre-
judgment interest from the date of the Notice of Default in August 2008.

2011-10-19 11:48

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1 3.8 Defendants actions have caused great emotional stress and apprehension to
2 Plaintiffs and have caused them to expend sums for attorney's fees and costs of litigation.
3 Defendants improper foreclosure has damaged Plaintiffs reputation and credit rating, causing
4 them financial loss and public embarrassment. Plaintiffs are entitled to damages, attorney's
5 fees and costs from Defendants breach of contract.

6
7 **IV. RESERVATION OF RIGHTS**

8 4.1 Plaintiffs reserve the right to assert additional claims as may be appropriate
9 following further investigation and discovery.

10 **V. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs, having asserted claims for relief, now pray for judgment as
12 follows:

13 5.1 For damages in the amount of the lost equity in the home, including pre-
14 judgment interest to the date of the first defective Notice given by Defendants.

15 5.2 Legal costs and attorney fees as allowed by law and the contract of the parties.

16 5.3 An award of damages to Plaintiffs for their emotional distress, public
17 embarrassment, and loss of credit rating caused by actions of Defendants.

18 5.4 Treble damages and attorney's fees as allowed by law.

19 5.5 For such other and further relief as the Court deems just and equitable in the
20 premises.

21 DATED this 17th day of October, 2011.

22 LADENBURG LAW, PLLC

23
24 /s/ John W. Ladenburg, Sr.

25 JOHN W. LADENBURG, SR., WSBA #5075
26 Attorneys for Plaintiffs
27

2011-10-19 11:49

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E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTONIN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

October 17 2011 3:43 PM

MICHAEL BEIERMANN

Plaintiff(s)

Vs.

JP MORGAN CHASE BANK NATIONAL
ASSOCIATION

Defendant(s)

No. 11-2-14760-1

ORDER SETTING CASE SCHEDULE

Type of case: PIN
 Estimated Trial (days):
 Track Assignment: Standard
 Assignment Department: 18
 Docket Code: ORSCS

KEVIN STOCK
COUNTY CLERK
NO: 11-2-14760-1

Confirmation of Service	11/14/2011
Confirmation of Joinder of Parties, Claims and Defenses	2/13/2012
Jury Demand	2/20/2012
Status Conference (Contact Court for Specific Date)	Week of 3/12/2012
Plaintiff's/Petitioner's Disclosure of Primary Witnesses	4/9/2012
Defendant's/Respondent's Disclosure of Primary Witnesses	5/7/2012
Disclosure of Rebuttal Witnesses	6/25/2012
Deadline for Filing Motion to Adjust Trial Date	7/23/2012
Discovery Cutoff	8/27/2012
Exchange of Witness and Exhibit Lists and Documentary Exhibits	9/10/2012
Deadline to file Certificate of Declaration re: Alternative Dispute Resolution (PCLR 16 (c)(3))	9/17/2012
Deadline for Hearing Dispositive Pretrial Motions	9/17/2012
Joint Statement of Evidence	9/17/2012
Pretrial Conference (Contact Court for Specific Date)	Week of 10/1/2012
Trial	10/15/2012 9:00

Unless otherwise instructed, ALL Attorneys/Parties shall report to the trial court at 9:00 AM on the date of trial.

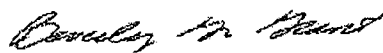
NOTICE TO PLAINTIFF/PETITIONER

If the case has been filed, the plaintiff shall serve a copy of the Case Schedule on the defendant(s) with the summons and complaint/petition: Provided that in those cases where service is by publication the plaintiff shall serve the Case Schedule within five (5) court days of service of the defendant's first response/appearance. If the case has not been filed, but an initial pleading is served, the Case Schedule shall be served within five (5) court days of filing. See PCLR 3.

NOTICE TO ALL PARTIES

All attorneys and parties shall make themselves familiar with the Pierce County Local Rules, particularly those relating to case scheduling. Compliance with the scheduling rules is mandatory and failure to comply shall result in sanctions appropriate to the violation. If a statement of arbitrability is filed, PCLR 3 does not apply while the case is in arbitration.

Dated: October 17, 2011



Judge BEVERLY G. GRANT
Department 18

2011-10-19 11:47

>> 0485112926764200 P 1/9

Legal Papers Fax Cover Sheet

REQUIRED INFORMATION - PLEASE PRINT		
Branch Name	Cost Center	Mail Code
Taconia Main Chasc	740501	wa1-2254
Employee Contact Name	Date Accepted	Phone Number
Arvin Kumar	10/19/2011	(253) 305-3440
Accepting Employee (if different from above)	Time Accepted	Fax Number
	11:38 a.m.	(253) 305-5437
Location Where Received (if different from above)		Number of pages (including cover sheet)
		9

Customer Name
Michael Beiermann and Tammy Beiermann

To: (Check One)

<input type="checkbox"/> Court Orders & Levies Columbus, OH Fax #: 866-699-0618 All States Document Type (Check one): <input type="checkbox"/> Bankruptcy Freeze Request <input type="checkbox"/> Bankruptcy Release Request (for a hold/restraint) <input type="checkbox"/> Citation to Discover Assets (IL) <input type="checkbox"/> Garnishment Documents <input type="checkbox"/> Guardianship Matter <input type="checkbox"/> Information Subpoenas/Interrogatories (CT/NJ/NY) <input type="checkbox"/> Levy <input type="checkbox"/> Liens <input type="checkbox"/> Receivership Orders <input type="checkbox"/> Restraining Notice <input type="checkbox"/> Seizure Warrant/ Seizure Notice (Deposit Accounts only) <input type="checkbox"/> Temporary Restraining Order <input type="checkbox"/> Other (List) _____	<input checked="" type="checkbox"/> National Subpoena Processing Indianapolis, IN Fax #: 317-757-7421 All States Document Type (Check one): <input type="checkbox"/> Grand Jury Subpoena <input type="checkbox"/> Search Warrant (non-Safe Deposit) <input type="checkbox"/> Subpoena (All Other) <input checked="" type="checkbox"/> Summons/Complaints <input type="checkbox"/> Other (List) _____
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NOTE: For forwarding information regarding Foreclosures/Sheriff's Sales and Bankruptcy notices [other than a Bankruptcy Freeze Request or Bankruptcy Release Request], refer to your Online Policies and Procedures.

Method of Receipt

☒ Hand-delivered ☐ Certified Mail ☐ Regular Mail •
☐ Other (describe): _____

Instructions

Upon receipt of document(s) sign, date and record time and branch location in upper right corner of the first page.

FAX all pages of document(s) immediately to the appropriate area. Print fax confirmation for your records.

Mail document(s) the same day to that area:

Court Orders & Levies OH1-1283

National Subpoena Processing IN1-4054

IMPORTANT NOTICE

The information contained in this transmission is confidential. If you are not the intended recipient, you are strictly prohibited from considering, disseminating or duplicating this communication, and you must immediately return this transmission to us and notify us by telephone. THANK YOU.

N13314 (04/2010)